IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 13807 of 2006(R)

AGAINST THE ORDER DATED / / IN EP.283/04 IN OS.99/2000 of PRINCIPAL SUB COURT,KOLLAM
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PETITIONER:

M.NARENDRAN NAIR, INDU VIHAR,
PULIYATHUMUKKU, AYATHIL, KILIKOLLOOR,
KOLLAM.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENTS:
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1. **M/S.SAKTHI MATHA CASHEW COMPANY**
   REP. BY ITS MANAGING PARTNER & PARTNER
   NALLILA, NEDUMPANA, KOLLAM.

2. **RAJAN, MANAGING PARTNER,**
   M/S.SAKTHI MATHA CASHEW COMPANY,
   NEDUMPANA, NELLILA, RESIDING AT PLAVILA RAJ
   NIVAS, NEDUMPANA, NELLILA.

3. **T.O.JOHNSON, PARTNER,**
   M/S.SAKTHI MATHA CASHEW COMPANY
   NEDUMPANA, NELLILA, RESIDING AT JOLLIYIL,
   PANAYAM, PERINADU, KOLLAM.

BY ADV. SRI.N.HARIDAS
SRI.P.N.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.13807/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE EXECUTION PETITION DT. 5.10.04.

EXT.P2:- COPY OF THE OBJECTION DT. 16.7.05.

EXT.P3:- COPY OF THE ORDER DT. 1.4.06.

/TRUE COPY/

P.S.TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.13807 OF 2006

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Dated this the 17th day of July, 2007

JUDGMENT

This writ petition is filed to set aside Ext.P3 order passed by the Principal Sub Judge, Kollam. The decree was put in execution by a prayer to arrest and detain the judgment debtor in civil prison on the ground that he is having sufficient means to pay and he is neglecting to pay the amount. Learned counsel for the petitioner submitted before me that the order passed by the court is as follows:'Step taken. Issue warrant. Await return of warrant'. The Code of Civil Procedure contemplates sufficient safeguard before committing a person to a civil prison as it affects his liberty. There are two stages under Order XXI Rule 37 and Order XXI Rule 40 and the court is bound to conduct an enquiry into the means of the judgment debtor and record about the means and thereafter enter into a finding that he is willfully neglecting to pay the amount. In spite of a very detailed counter regarding the incapacity to pay, I find no evidence has been taken in this matter and there has been no subjective satisfaction whatsoever to order warrant against the judgment debtor.

Therefore the order under challenge suffers from serious infirmity and it is set aside. But, at the same time, I do not want to close the matter here. An opportunity is given to the judgment debtor as well as the decree holder in the execution petition to substantiate their respective contentions by permitting them to adduce evidence in support of their contentions. Therefore the matter is remitted back to the executing court for fresh disposal in accordance with law. Parties are directed to appear before the executing court on 13.8.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-